

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **September 23, 2004**, at 10:00 a.m.
in the Auditorium, Room 102 of the Office Building 9,
744 P Street, Sacramento, California 95814-6413.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **September 23, 2004**, following the Public Meeting
in the Auditorium, Room 102 of the Office Building 9,
744 P Street, Sacramento, California 95814-6413.

At the Public Hearing, the Board will consider the public testimony on the proposed changes noticed below to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **September 23, 2004**, following the Public Hearing
in the Auditorium, Room 102 of the Office Building 9,
744 P Street, Sacramento, California 95814-6413.

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

STEVEN L. RANK, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **September 23, 2004.**

1. TITLE 8: CONSTRUCTION SAFETY ORDERS
 Chapter 4, Subchapter 4, Article 13
 Section 1602(a)
 Personal Flotation Devices

2. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
 Chapter 4, Subchapter 7, Article 2
 Sections 3210 and 3212
 Fall Protection at Ladderway and Stairway Entrances and Openings

A description of the proposed changes are as follows:

1. TITLE 8: CONSTRUCTION SAFETY ORDERS
 Chapter 4, Subchapter 4, Article 13
 Section 1602(a)
 Personal Flotation Devices

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) initiated this rulemaking as the result of Petition File No. 418, submitted by Mr. Michael Grupa, STEARNS, Inc. (Petitioner). The petition was granted on October 19, 2000, to the extent that an advisory committee be convened by board staff to consider amendments to Title 8, Construction Safety Orders, section 1602. The petitioner recommended amending section 1602 to clarify which United States Coast Guard (USCG) approved personal flotation device (PFD) is required for employees working over or near water. The petitioner stated that confusion exists in the construction industry as to which type of USCG approved PFD meets the requirement in section 1602(a)(1), which states that workers must use "U.S. Coast Guard approved personal flotation devices that are of a type that will support an unconscious person's head above water."

There are five types of PFDs (I, II, III IV, and V). Although the Type I personal flotation device is an offshore PFD designed to turn most wearers face up in the water, this PFD is not guaranteed to do so in all cases. This is especially true for workers wearing equipment belts containing tools and/or equipment. Additionally, the Type I PFD is bulky and will significantly interfere with the employee's work activities, therefore creating a hazard by limiting the workers' field of vision and restricting range of motion. For this reason the industry has widely adopted the use of the Type III and Type V PFDs at construction sites where workers work near or over water. For lifesaving boats, section 1602(a)(3) is intended to enable quick recovery of the fallen worker from the water, where the PFD keeps the worker at the water surface, making timely recovery possible. Board staff wishes to emphasize that this proposal clarifies what types of USCG approved PFDs meet the requirements of section 1602, and provides the employer with flexibility to select the most effective PFD for use by their employees, based on the specific worksite conditions.

The following actions are proposed:

Section 1602. Work Over or Near Water. Subsection (a)(1)

Section 1602 addresses drowning hazards associated with work over or near water by requiring specific equipment to be worn by the employees, and safety equipment to be immediately available at the jobsite, including personal flotation devices (life jackets), ring buoys, lifesaving boats, and tag or safety lines. Included in section 1602(a)(1) is a requirement for U.S. Coast Guard approved personal flotation devices of a type that will support an unconscious person's head above water.

An amendment is proposed to delete the phrase “of a type that will support an unconscious person's head above water” and replace this language with “and marked or labeled Type I PFD, Type II PFD, Type III PFD, or shall be a USCG approved Type V PFD that is marked or labeled for use as a work vest for commercial use or for use on vessels.” This amendment clarifies the existing requirement for USCG approved personal flotation devices that must be worn, and does not impose any new requirements.

Because current language does not provide clear direction regarding which PFD would meet the requirement in subsection (a)(1), the effect of this amendment will be to clarify that Type I PFD, Type II PFD, Type III PFD, or Type V USCG approved PFDs will provide the necessary safety when employees work at locations where the danger of drowning exists.

This proposed amendment will render Title 8 standards at least as effective as federal requirements in 29 CFR, section 1926.106, which allows any type OSHA approved PFD to be worn. Like the language of the proposed amendment, federal language limits the use of PFDs to those marked or labeled Type I PFD, Type II PFD, Type III PFD, or shall be a USCG approved Type V PFD.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed amendment clarifies an existing standard and eliminates confusion about what types of USCG approved personal flotation devices must be provided by the employer, and used by employees when working at locations where the danger of drowning exists.

Cost Impact on Private Persons or Businesses

The board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

2. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS

Chapter 4, Subchapter 7, Article 2
Sections 3210 and 3212

Fall Protection at Ladderway and Stairway Entrances and Openings

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking action is being initiated in response to a petition (Petition File No. 427) which raised concerns that Title 8 regulations contained in the General Industry Safety Orders, Section 3210, “Guardrails at Elevated Locations” and Section 3212, “Floor Openings, Floor Holes, Skylights and Roofs” are not clear as to the requirements for fall protection at ladderway and stairway entrances to elevated locations such as platforms and catwalks. The proposed amendments to both Sections 3210 and 3212 were developed with the assistance of an advisory committee in order to clarify the requirements for providing fall protection at access openings to platforms from fixed ladders or stairways.

Section 3210. Guardrails at Elevated Locations.

Section 3210 defines the requirements when guardrails and/or toeboards are required on elevated locations. Subsection (a) outlines the guardrail/toeboard requirements for elevated locations such as open sides of landings, platforms, runways and catwalks that are part of a building or structure. Subsection (b) outlines the guardrail/toeboard requirements for other elevated work locations that would not be part of a building structure such as various elevated portions of large equipment or machinery, including elevated locations of aircraft.

Subsection (a)

The reference to Title 24, Part 2, Section 509.7, following the 13 exceptions listed in subsection (a), is proposed for deletion. Prior to September 30, 2002, the Board was mandated by Health and Safety Code Section 18943(b) to submit Title 8 building standards to the California Building Standards Commission for their approval and adoption into Title 24, the California Building Code.

Assembly Bill 3000 (Stats. 2002. c. 1124), which was signed by the Governor and filed with the Secretary of State on September 30, 2002, repealed Labor Code Section 142.6 and Health and Safety Code Section 18943(b), thus exempting the Board from the building standard requirements contained in these Codes. The references to Title 24 and Section 18943(b) of the Health and Safety Code in Section 3210, subsection (a) are unnecessary and proposed for deletion.

New Subsection (d)

New subsection (d) is proposed for Section 3210, which states, “Openings in guardrails for ladderway access shall be protected as required by Section 3212(a)(2) of the General Industry Safety Orders.” The addition of this subsection will have the effect of ensuring that employers are aware of the specific requirements for protection at ladder access openings through perimeter guardrails that are contained in Section 3212.

Section 3212. Floor Openings, Floor Holes, Skylights and Roofs.

Existing Section 3212 addresses the requirements for the guarding of floor openings, floor holes, skylights and roofs by means such as covers, guardrails or equivalent including the use of fall protection systems.

Subsection (a)(1)

Existing subsection (a)(1) specifies the guarding requirements for floor and roof openings and contains an exception for stairway or ladderway entrances. New subsection (a)(2) is proposed which will specifically address protection at ladderway entrances. Consequently, it is proposed to delete the reference to ladderway entrances from the exception to (a)(1). The proposed amendment will clarify that ladderway entrances are not exempt from the protection requirements contained in subsection (a) as they are addressed in proposed new subsection (a)(2).

New Subsection (a)(2)(A)

New subsection (a)(2)(A) addresses fall protection requirements specific to ladderway entrances/openings which provide access to/from floor openings or platforms. The proposed new subsection is similar to that of the counterpart federal standard contained in 29 CFR 1910.23(a)(2). The proposed new subsection will have the effect of ensuring that protection at ladderway access openings is provided.

An exception to the requirements of subsection (a)(2)(A) is proposed at ladder openings for entrance/access at perimeter roof edges where guardrail protection is not required by the provisions in Section 3212(d). Section 3212(d) requires guardrails where there is a routine need for employees to approach within 6 feet of roof edges. The proposed exception will have the effect of exempting certain ladderway entrances where the perimeter of the roof is not required to have guardrails, as there is no need to provide a swinging gate or equivalent protection at the ladder access to roofs.

New Subsections (a)(2)(B)1. and 2.

New subsections (a)(2)(B)1. and 2. are proposed which outline the vertical height and strength requirements for the swinging gate or equivalent protection required under proposed new subsection (a)(2)(A). The proposed new subsections will ensure that swinging gates or other equivalent protection provided at ladderway openings/entrances to elevated locations will be of sufficient height and strength to provide effective fall protection.

Existing subsections (a)(2) through (a)(4) are editorially renumbered as (a)(3) through (a)(5) to accommodate the inclusion of proposed new subsection (a)(2).

In addition, the Title 24 California Building Code references have been deleted in proposed subsections (a)(4) and (a)(5) as outlined in the rationale for the proposed amendments to Section 3210(a).

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states.

At the advisory committee meeting, represented industries commented that they are providing fall protection at the fixed ladder access openings to elevated locations by the use of single or double bar swinging gates, single drop bar/arm gates, and for many older installations, chains are used as barrier protection at the ladder access opening to platforms or other elevated locations.

The provisions of proposed Section 3212(a)(2) provide the employer the option to provide ladder access openings with a swinging gate or equivalent protection, or that the passageway to the ladder opening be so offset that a person cannot walk directly into the opening. The standard allows for equivalent protection to that of a swinging gate (e.g. single drop bar/arm gates or chain barriers) provided that the vertical height and strength requirements in proposed Section 3212(a)(2)(B) are met.

The Decision After Reconsideration issued by the Appeals Board in the matter of the appeal from the Daily Breeze establishes that the employer already has an obligation to provide fall protection at the ladder access end of a platform. Board staff believes that employers are already required to provide the protection clarified in the proposal and that the proposal does not mandate the use of new devices or equipment. Additionally, at the advisory committee meeting convened for this rulemaking action, it was evident that committee members are already providing either swinging gates or equivalent protection at ladder access openings to platforms or catwalks.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a "new program or higher level of service of an existing program within the meaning of section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, these standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than September 17, 2004. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on September 23, 2004 will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@hq.dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

STEVEN L. RANK, Chairman

TITLE 8

CONSTRUCTION SAFETY ORDERS

CHAPTER 4, SUBCHAPTER 4, ARTICLE 13

SECTION 1602(a)

PERSONAL FLOTATION DEVICES

TITLE 8

GENERAL INDUSTRY SAFETY ORDERS

CHAPTER 4, SUBCHAPTER 7, ARTICLE 2

SECTIONS 3210 AND 3212

**FALL PROTECTION AT LADDERWAY
AND
STAIRWAY ENTRANCES AND OPENINGS**